THE HONOURABLE SRI JUSTICE V. ESWARAIAH

DATED: 06-11-2007

WRIT PETITION No. 22873 OF 2007

BETWEEN

K. Gangappa,
S/o. Chinnappa,
Occ: Bamboo Worker,
R/o. 9/564,
Rayachoti Road, Kadiri,
Anantapur and another.

...PETITIONERS

AND

Government of Andhra Pradesh,
Rep. by District Collector,
Anantapur and others.

...RESPONDENTS

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ORDER:

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Petitioner seeks a Writ of Mandamus to declare the order of the Tahsildar, Kadiri in R.C.No.48/007(E), dated 23.06.2007 as confirmed by the Revenue Divisional Officer, Penukonda in D.Dis. 946/2007/SDT dated 04.08.2007 as illegal and arbitrary.

2. The Tahsildar, Kadiri by the aforesaid order directed the petitioners to vacate the encroached portion of the land and the Roads and Buildings (R&B) authorities were also directed to give ample opportunity before evicting the encroachers from the land by taking necessary assistance of the local Mandal Surveyor at the time of the eviction as marked in the sketch and not to touch or demolish the survey No.382-3D. On an appeal filed by both the petitioners herein against the said order, the Revenue Divisional Officer, confirmed the order of the Tahsildar by order dated 04.08.2007, holding that the houses constructed by the petitioners are on the land acquired by the Government in Sy.No.682-3D over an extent of 50 cents of Kadiri for formation of the road from Anantapur to Chennai and the petitioners constructed the houses in the acquired land by way of encroachment. The said land was acquired for widening of 4-lane road leading from Ananthapur to Chennai.

3. The first petitioner is the father-in-law of the second petitioner and the second petitioner is the wife of the son of the first petitioner. It is the case of the petitioners that originally the land in Sy.No.682-3 admeasuring an extent

of 0.58 cents belonged to Sunku Subbaiah and from him an extent of Ac.0.10 cents of land was purchased by

K. Venkatesu S/o. K. Buddappa and G. Pedda Chandayudu

S/o. Mallappa in 1925; the paternal and maternal uncles of the first petitioner respectively. In the partition the first petitioner's family got an extent an extent of 0.02 cents of land which was allotted to the first petitioner and an extent of 0.02 cents was purchased the first petitioner on 09.02.1962 and the second petitioner purchased an extent of 0.02 cents in 2005. The first petitioner constructed a house bearing Door No.9/568 and purchased the house bearing D.No.9/564 in 1962 and the second petitioner purchased the house in D.No.9/567 in 2005. Thus, it is the case of the petitioners that there are there houses bearing D.Nos.9/564, 9/567 and 9/568 and the said building are also assessed to tax and they are paying tax to the municipality.

4. It is stated that when the Assistant Executive Engineer, R & B Department, National Highways, Kadiri initiated action for eviction of the petitioners without following due process of law, the first petitioner filed W.P.No.20723 of 1997 and this Court by order dated 04.02.1998 disposed the writ petition directing the Tahsildar, Kadiri conduct an enquiry and pass orders. The first petitioner also filed a suit in O.S.No.350 of 1999 on the file of the Principal Junior Civil Judge, Kadiri for grant of permanent injunction and the suit was decreed by order dated 07.05.2004. Pursuant to the directions of this Court in W.P.No.20723 of 1997, the Tahsildar, Kadiri issued a notice dated 12.02.2007 asking the petitioners to appear before him with documentary proof to show that they have got title to the property. But the Tahsildar, without considering the contentions, requests and verifying the documents passed an order on 23.06.2007 holding that the entire land in Sy.No.682-3B admeasuring 0.50 cents was already acquired by the then Sub-Collector, Penukonda in his Award No.3/49 dated 24.07.1949. The Tahsildar further held that the total land in Sy.No.682-3 admeasuring 0.58

cents was sub-divided and denoted into Sy.Nos.682-3A admeasuring 0.01 cents; Sy.No.682-3B admeasuring 0.50 cents; Sy.No.682-3C admeasuring 0.03 cents and Sy.No.682-3D admeasuring 0.04 cents and the land of an extent of 0.50 cents in sub-divided Sy.No.682-3B has been acquired by the aforesaid award. The houses of the petitioners fall under the said acquired land, which belongs to National Highway (R & B Department). Aggrieved by the said order of the Tahsildar the petitioner filed an appeal before the Revenue Divisional Officer, who by order dated 04.08.2007 dismissed the appeal confirming the orders of the Tahsildar.

5. Learned counsel for the petitioners submits that for the extent of 0.02 cents of land inherited by the first petitioner, compensation has not at all been received by the family members of the first petitioner and there is no record to show that the remaining land was also acquired. The property of the petitioners was not at all acquired and therefore, they are not liable to be evicted and the respondents are not entitled to demolish the said structures.

6. The first petitioner in O.S.No.350 of 1999 filed sale deed dated 23.03.1962, cist receipts, water and electricity bills; except those documents no other documents have been filed before the civil Court. Before this Court the petitioners filed sale deed dated 26.04.2005 executed by one P. Mahaboob Basha Khan in favour of the second petitioner – K. Sharada relating to house No.9/567 and the said Mahaboob Basha purchased the said house from Kanikaram Venkata Ramanappa in 1996 and the said house is situated in Sy.No.682-3. They filed a copy of another sale deed dated 29.06.1925 executed by Sunku Subbaraya Setty in favour of Medari Chendrayudu in respect of 0.05 cents in Sy.No.682-3. They filed a copy of another sale deed dated 29.06.1925 relating to 0.05 cents of land in Sy.No.682-3 relating to an extent of 0.05 cents executed by Sunku Govindappa Setty in favour of Medari Venkatesu. The first petitioner –

Gangappa purchased a site bearing D.No.161 admeasuring 14 lings x 13 lings and a terraced house constructed admeasuring 3 ½ Ankanams ad 1/4th share in the well vide sale deed dated 23.03.1962 executed by Jeedi Narasimhulu.

7. It is not in dispute that the said house of the petitioners bearing D.No.9/569 and 9/569-1 (old numbers 5/158, 5,161 and 5/160) and new D.Nos.9/564 and 9/568 are located at the junction of bypass road and Rayachoty Road, Kadiri. It is also not in dispute that an extent of 0.50 cents in Sy.No.682-3B was acquired but it is the case of the petitioners that so far in respect of 0.02 cents of the land no compensation has been paid.

8. This Court while disposing W.P.No.20723 of 1997 filed by the first petitioner directed the Mandal Revenue Officer to issue a notice calling upon the occupants to show cause as to why action proposed shall not be taken by giving reasonable opportunity. Accordingly, the MRO issued a show cause notice dated 02.07.2007 calling upon the encroachers – Riaz relating to H.No.9/569-1; K. Medara Gangappa – first petitioner relating to H.Nos.9/569, 9/568, 9/567, 9/564 and 9/563 and K. Sharada – second petitioner relating to H.No.9/567 and Md. Ali. Pursuant to the said notice the petitioners appeared before the Tahsildar and contended that his forefather – K. Venkatesu purchased 0.05 cents in 1925 and his maternal uncle – G. Pedda Chandayudu purchased another extent of 0.05 cents in 1925, thereafter the houses have been constructed and the said lands have not been acquired. Therefore, the petitioners are entitled to enjoy the said property.

9. The Tahsildar considered as to whether the petitioners are the encroachers in respect of the lands acquired by the Government.
The relevant records narrated in the order of the Tahsildar go to show that

the field/land in Sy.No.682-3B admeasuring 0.50 cents was acquired under the Land Acquisition Act for formation of a Bypass road at Kadiri and the acquisition proceedings were published in Fort Saint George Gazette dated 08.03.1949 showing the owners as Borugua Khasim Sab, Medara Anjanappa, Medara Channarayudu, Medara Venkatesu, D.K. Hussain Sab, Mangu Hanumantha Rao. Subsequent to the said acquisition proceedings an award was also passed in Award No.3/49 dated 24.07.1949 by the Sub-Collector and Land Acquisition Officer, Penukonda. A perusal of the said award goes to show that against land in Sy.No.682-3B admeasuring 0.50 cents the registered holders were shown as Borugula Khasim Sahib, Medara Anjanappa, Medara Channarayadu, Medara Venkatesu, D.K. Hussain Sahib and Mangu Hanumantha Rao. The aforesaid three persons - Medara Anjanappa, Medara Channarayadu and Medara Venkatesu, are the ancestors of the petitioners. Admittedly even according to the petitioners, it is stated that the Medara Venkatesu is the owner of certain extent of land in their possession. Insofar as payment of compensation with regard to the said land in Sy.No.682-3B is concerned it is just and proper to extract the relevant portion of the Award at Para 22 as follows:

"22. S.No.683-2B. Ryotwari Wet Extent 0.50 acre.

The land is registered in the names of the following persons and the extent of the possession and enjoyment of each is as given below.

1.	Borugua Khasim Sab	0-20 acre
2.	Medara Anjanappa	0-01, ¾ acre
3.	Medara Channarayudu	0-03 ¼ acre
4.	Medara Venkatesu	0-03 ¼ acre
5.	D.K. Hussain Sab	0-03 ¼ acre
6.	Mangu Hanumantha Rao	0-18 ½ acre

Total 0-50 acre

There is one round wall, four houses and one ruined mud terraced house in this S.No. These were inspected by the then

Revenue Divisional Officer who fixed their value as shown below.

Round wall	Rs.176/-	(Belongs to Medara Venkatesu)
Four houses	Rs.1582/-	(Belongs to Medara Venkatesu and Chennarayudu)
Ruined mud Terraced house	Rs.30/-	(Belongs to Borugula Khasim Sahib)
Total	Rs.1788/-	

The compensation payable for this field is as worked out below.

Land value at Rs.6000/- per acre	Rs.3000/-
Cost of building etc.	Rs.1788/-
Total	Rs.4780/-
Solatium at 15%	718-3-2
Total compensation	Rs.5506-3-2

The amounts payable to Medara Channarayudu and Medara Venkatesu on account of the buildings has not been settled. It is not known whether Medara Anjanappa possesses any share in the buildings. He is a resident of Dharmavaram and he has not preferred any claim in respect of the land or the buildings. As the share of each pattadar Medara Venkatesu, Medara Chennarayudu and Medara Anjanappa has not been settled, the entire compensation amount in respect of this S.No. will be deposited in the civil court and a reference made to is under Section 30 of the Land Acquisition Act."

10. In view of the aforesaid Award proceedings it cannot be said that compensation to the houses, structures and the lands was not paid. The compensation to the four houses, ruined terraced house and round wall was also calculated and the total amount of compensation of Rs.5,506-3-2 ps was decided to be deposited in the civil Court and a reference was made to it under Section 30 of the Land Acquisition Act. For non-settlement of amount apportioned among them, either the petitioners or their ancestors cannot find fault with the authorities as admittedly the land has been acquired after

following due procedure and award was also passed. If the claim under the Land Acquisition Act was not settled under Section 30 of the Act it is always open to the petitioners to agitate for their right to claim, share and entitlement for compensation but it cannot be said that the lands in Sy.No.682-3B have not been acquired.

11. Learned counsel for the petitioners further submits that to save the property situated in Sy.No.682-3D the authorities have changed the alignment to affect the houses of the petitioners and therefore, the Tahsildar while holding that the buildings of the petitioners are situated in the acquired Sy.No.682-3B and ordered eviction with a specific direction not to touch or demolish the Sy.No.682-3D.

12. It is nobody's case that the land in Sy.No.682-3D has been acquired, therefore, the question of demolishing or touching the structures in Sy.No.682-3D does not arise. Insofar as the houses and the property purchased by the petitioners are concerned they are admittedly situated in Sy.No.682-3B and compensation for an extent of 0.50 cents in Sy.No.682-3B was already determined for the houses, land and well and if the forefathers were not paid compensation,
for their internal disputes, it cannot be said that there are lapses on the part of the department as they could have settled their claims under Section 30 of the Land Acquisition Act. Once the lands are acquired the same vests with the National Highway authorities, therefore, it cannot be said that the petitioners are not encroachers. In view of the aforesaid facts and circumstances of the case, I do not see any merits in the writ petition.

The writ petition is accordingly dismissed. However, it is made clear that if the compensation was not deposited before the civil Court and the amounts have not been received or settled, it is open for the petitioner to take

legal recourse for receipt of the said compensation amount as awarded in Award No.3/49 dated 24.07.1949. There shall be no order as to costs.

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V. ESWARAIAH, J

November 6th , 2007
DSK